

Agenda

Item #4



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: August 12, 2011

Re: Audit of 2010 Candidate Patrick McGowan

I have attached the draft audit report concerning the 2010 gubernatorial campaign of Patrick McGowan, which was financed with Maine Clean Election Act funds. The report contains two unintentional violations of the reporting requirements. Based on the findings in the report, the Commission staff presently intends to recommend that you assess civil penalties totaling \$300 at your August 18 meeting.

At this time, the Commission staff expects that the campaign will respond to the proposed findings and penalties in writing before the August 18 meeting or by having a representative present at the meeting. If the campaign submits written comments, we will forward them to you by e-mail as soon as we receive them. We will issue a final audit report prior to the August 18 meeting.

Thank you for your consideration of this matter.



STATE OF MAINE
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AND ELECTION PRACTICES
135 STATE HOUSE STATION
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04333-0135

July 29, 2011

Hon. Patrick K. McGowan
5 Lincoln Street
Hallowell, ME 04347

**NOTICE OF RECOMMENDED FINDINGS
OF VIOLATION AND PENALTIES**

Dear Mr. McGowan:

Thank you for the information and documents your campaign has provided as part of the audit of your 2010 primary election campaign for Governor as a Maine Clean Election Act (MCEA) candidate. The final audit report (enclosed) contains two findings.

Finding No. 1 relates to an unintentional error made by the campaign in March 2010 in tracking how much the campaign had received in seed money contributions. The error had two consequences: the campaign overstated the contributions disclosed in the April 1, 2010 seed money report by \$2,048. Also, the campaign unintentionally used MCEA funds to pay for some services received by the campaign prior to your certification as an MCEA candidate. As noted in Finding No. 2, the campaign inadvertently did not disclose \$248 in expenditures in the 11-day pre-primary campaign finance report. Both of these reporting errors were detected by the campaign treasurer, Mark Barrett, and self-reported by the campaign to the staff of the Commission.

Your Opportunity to Respond to Staff Recommendations

The members of the Maine Ethics Commission will meet at 9:00 a.m. on Thursday, August 18, 2011 at the Commission's office at 45 Memorial Circle in Augusta. You are welcome to respond in writing to the enforcement actions recommended by the staff. If we receive a written response by Monday, August 8, we will include it in a packet of materials that I intend to mail to the Commissioners on August 9. If we receive a written response after August 8, I will forward it to the Commissioners by e-mail. You and/or your campaign treasurer are also welcome to respond by attending the Commission's August 18 meeting in person, but that is not required.

Actions Recommended by Commission Staff

The Commission staff intends to recommend that the Commissioners take the following actions at the August 18, 2011 meeting:

Audit Report Finding No. 1

- find that the McGowan campaign violated 21-A M.R.S.A. § 1125(12) by failing to accurately report contributions received during the qualifying period;
- find that the McGowan campaign violated 21-A M.R.S.A. § 1125(2-A)(A) by using MCEA funds to pay for services received prior to the candidate's certification as an MCEA candidate; and
- assess a penalty of \$200 for these two violations (\$100 for each violation).

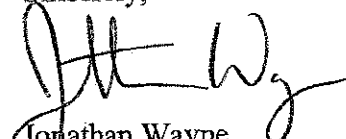
Audit Report Finding No. 2

- find that the McGowan campaign violated 21-A M.R.S.A. § 1125(12) by not reporting nine expenditures totaling \$248 in the 11-day pre-primary campaign finance report; and
- assess a penalty of \$ 100 for this violation.

The recommended civil penalties total \$300. The Commission is authorized to assess civil penalties for violations of the MCEA pursuant to 21-A M.R.S.A. § 1127(1).

Thank you for considering this notice of recommended penalties. Please call me at 287-4179 if you have any questions about the Commission's consideration of this matter.

Sincerely,


Jonathan Wayne
Executive Director

cc: Mark W. Barrett



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AUGUSTA, MAINE
04333-0135

July 29, 2011

Mark W. Barrett, Treasurer
McGowan for Maine
44 Congress Street, Apt. 2
Portland, ME 04101

Subject: 2010 Campaign Audit – Revised Draft Audit Report

Dear Mr. Barrett:

We have considered your recent request to combine findings 1 and 2 of the original draft into a single finding. Your argument was persuasive, and we have revised the draft report accordingly.

The revised draft is enclosed. Please note that we have also provided our penalty recommendations for each of the two findings. I ask that you submit revised comments on the draft to me as soon as possible. Once I have the comments, we will issue the final report. As you know, we plan to present the report to our commissioners at the Commission meeting on August 18, 2011.

Call me if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Vincent W. Dinan".

Vincent W. Dinan
Commission Auditor

Enclosure

cc: Hon. Patrick K. McGowan
Jonathan Wayne



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135
REVISED DRAFT
July 29, 2011

Audit Report No. 2010 – GV003
Candidate: Patrick K. McGowan
Gubernatorial Candidate – 2010 Primary Election

Background

Patrick K. McGowan was a candidate for Governor of the State of Maine in the 2010 Democratic primary election.

Mr. McGowan was certified by the Commission on Governmental Ethics and Election Practices (Commission) as a Maine Clean Election Act (MCEA) candidate on April 7, 2010. MCEA candidates are required under the Act to submit reports of the following activities: contributions made to their campaigns; campaign expenditures; outstanding campaign debt; and acquisitions and subsequent disposition of campaign equipment. Such reports are made for specified periods during the election cycle. Contributions and expenditures reported by the McGowan Campaign and listed in the following reports were included in the audit examination:

- 2010 Seed Money
- 2010 42 Day Pre-Primary
- 2010 Eleven Day Pre-Primary
- 2010 42 Day Post-Primary

Audit Scope and Process

The McGowan Campaign generated contributions and expenditures in the following amounts:

FINANCIAL ELEMENT	AMOUNT
Seed Money Contributions	\$76,367
MCEA Funding	\$599,998
Other Cash Receipts	\$0
Disbursements	\$670,834

The Commission staff validated more than \$40,000 of Seed Money contributions from registered Maine voters. The MCEA requires that candidates for Governor who seek to qualify for "Clean Election" funding must collect a minimum of \$40,000 in Seed Money contributions from registered Maine voters.

In addition, the Commission Auditor performed verification tests on out-of-state contributions made by check and through online processing services.

The Auditor also verified supporting documentation for \$514,495 or about 77 percent of total campaign expenditures. The verification process involved making random selections of expenditure transactions from different reporting periods and ranging in value, and tracing the transactions to source documentation, i.e., vendor invoices, receipts, and contracts. Source documents were then matched to payment records, e.g., cancelled checks, wire transfers.

It should be noted that the McGowan Campaign spent \$366,764 on radio and television advertising, or about 55 percent of total expenditures went to purchases of broadcast media services. The Auditor verified documentary support for 100 percent of all media expenditures.

The audit disclosed no purchases of equipment by the McGowan Campaign that were paid for with MCEA funds.

Findings and Recommendations

Finding No. 1 – Misreported Seed Money Contributions and Seed Money Expenditures in Excess of Total Contributions

The McGowan campaign reported total contributions of \$78,415 on their 42 Day Post-Primary report, the final financial report submitted to the Commission by the candidate. Subsequently, in a post-election review of campaign finances conducted by the campaign treasurer in connection with this audit, it was determined that the campaign had reported \$2,048 in excess of the contributions actually received. The error was self-disclosed by the campaign and appears to have been inadvertent; however, it resulted in expenditures in excess of permitted amounts to be made during the qualifying period.

The election law limits the amount of qualifying (Seed Money) period expenditures to the amount of total contributions received by the candidate. As indicated above, the McGowan Campaign over-estimated their Seed Money contributions and made expenditures matching what they thought were the amount of contributions received. In fact, McGowan campaign expenditures exceeded total contributions by \$1,599. As mentioned above, the Campaign Treasurer reported the error to the Commission after he discovered the reporting discrepancy during an internal review of campaign documentation connected with the audit.

The two errors – over-reporting Seed money campaign contributions, and excess expenditure of Seed Money funds – caused the following:

- Contributions were understated, and payments in excess of contributions were made, with the result that the candidate's Seed Money Report was inaccurate, and the public and other candidates were denied timely information concerning Mr. McGowan's qualification for "Clean Election" funding.
- The basis for disbursing MCEA funds to the McGowan Campaign was compromised in that the misstatement of total Seed Money contributions received by and expenditures made by the Campaign altered the amount of funding provided to the candidate.
- Certain expenditures made during the Seed Money period ultimately were paid for with Maine Clean Election Act funds and not with Seed Money as required by law.

Standard – 21-A M.R.S.A. § 1125 (12) states that "Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission." 21-A M.R.S.A § 1125(2-A)(A) states that "All goods and services received prior to certification must be paid for with seed money contributions It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification."

Recommendation – the Commission staff recommends that the Commission:

- find that the McGowan campaign violated 21-A M.R.S.A. § 1125 (12) by failing to accurately report contributions made to the campaign during the qualifying period, and by making expenditures in excess of the allowable maximum; and
- find that the McGowan campaign violated 21-A M.R.S.A. § 1125(2-A)(A) by using MCEA funds to pay for services received prior to the candidate's certification as an MCEA candidate; and
- assess a penalty of \$200 for the violations under 21-A M.R.S.A. § 1127(1).

Finding No. 2 – Unreported Campaign Expenditures

The McGowan Campaign overlooked nine small expenditures totaling \$285.83 when they prepared and submitted their 11 Day Pre-Primary campaign finance report. The campaign treasurer discovered the error during his post-election internal review, and reported it to the Commission.

Standard - 21-A M.R.S.A. §1125(12) states in part that “participating and certified candidates shall report ... all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission.”

- find that the McGowan campaign violated 21-A M.R.S.A. § 1125(12) by inaccurately reporting expenditures;
- assess a penalty of \$ 100 under 21-A M.R.S.A. § 1127(1) for this violation;

Administrative Issues

The McGowan Campaign determined, as a result of the audit, that the following adjustments to their campaign finance reports should be made:

- A. Expenditures (mostly payments for radio and television advertising) in the amount of \$64,444 which were reported in the 11 Day Pre-Primary period should be transferred into the 42 Day Post-Primary reporting period.
- B. Adjustments related to media expenditures and certain minor post-election expenditures totaling \$60,065 not previously reported should be classified as 42 Day Post-Primary transactions.

The activities discussed in A and B relate primarily to timing differences, and do not rise to the standard of violations of the Act or Commission rules. All campaign reports have been amended as necessary.

Auditor's Note

As previously indicated, the McGowan Campaign spent over \$366,000 on radio and television advertising. Most of these expenditures were placed through third party media buyers. At the audit's inception, the campaign did not have detailed documentation available to support their reported payments

for television and radio advertising. It was necessary, therefore, for the campaign to work with their media buyers to obtain copies of invoices issued by media outlets, and cancelled checks issued in payment for media services. An important outcome of this verification exercise was that the Campaign recovered \$7,348 in refunds due from media outlets and their media buyers that otherwise might not have been collected and returned to the Clean Election Fund.

In the process of auditing gubernatorial and other candidates who have made large scale media expenditures, the Auditor has found instances where refunds owed to campaigns have not been tracked and automatically returned to the Commission. There appear to be several reasons:

- The Maine Clean Election Act and related Commission rules are somewhat vague relating to procedures, obligations, and accountability regarding issues of media expenditures and refunds, and may not provide sufficient guidance to candidates and treasurers.
- Radio and television advertising costs are prepaid by the candidate. Media invoices are not generated contemporaneously with expenditures, and most of the time, campaign treasurers are not aware that refunds for services not provided, i.e., radio and television spots not run, may be due from media outlets and media buyers.
- Once campaigns have terminated, there is usually no one available to pursue documentation and refund issues.

The Commission may want to consider directing the Commission staff to draft expansions of Commission rules that apply to media purchases and related documentation and refund recovery requirements for their consideration.

Candidate's Comments on the Report

Respectfully submitted to the Members of the Commission,

Approved:

Vincent W. Dinan
Commission Auditor

Jonathan Wayne
Executive Director